

141.4

REVIEW OF EDP
MODEL CONTRACT

April, 1973

ADAM B. BROWN
CHAIRMAN
VINCENT THOMAS
SIXTY-EIGHTH DISTRICT
MIKE CULLEN
FORTY-FOURTH DISTRICT
RAY E. JOHNSON
FOURTH DISTRICT

California Legislature

VIC. THOMAS
WILLIAM E. COOPER
TWENTIETH DISTRICT
GEORGE DEKMEJIAN
THIRTY-SEVENTH DISTRICT
GEORGE N. ZENKOW
SIXTEENTH DISTRICT

VINCENT THOMAS
CHAIRMAN

ROOM 4120, STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
(916) 445-7500

WALTER J. GUNDEL, CLERK OF SENATOR
(916) 445-1600

BILL PETTITE, CONSULTANT
(916) 445-7500

EVE OSTOJA, COMMITTEE SECRETARY
(916) 445-7500

April 26, 1973

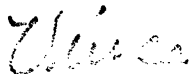
Assemblyman Willie L. Brown, Jr.
Chairman, Committee on Ways and Means
Suite 319, State Capitol
Sacramento, California 95814

Dear Willie:

Transmitted herewith is an analysis of the new EDP Model Contract prepared in response to your August 10, 1972, request for assistance in monitoring the development of the Teale Data Center.

With my warm best wishes,

Sincerely,



VINCENT THOMAS, Chairman
Joint Legislative Audit Committee

REVIEW OF EDP MODEL CONTRACT

Section 3 of Chapter 1254.72 (AB 2393, Cullen) required the Department of Finance to prepare a revision to the Model Contract for lease of EDP systems and components no later than February 15, 1973.

The statute provided that in revising the contract, consideration was to be given to "changes which would resolve the following contractual areas of difficulty":

"(1) Limitations of liability. Disclaimers of warranty, and patent protection.

(2) Requirements which are forbidden by federal law, mandate, injunction, or are otherwise contrary to existing federal EDP agreements.

(3) Requirements which would make vendors internally rewire their hardware to meet contract statements.

(4) Requirements which force a vendor to alter his corporatewide pricing structure for goods and services into a form not offered by the vendor to any other state or federal government entity.

(5) Inconsistency in terminology definitions."

We have reviewed, from a technical (but not from a legal) standpoint, the proposed revised Model Contract as prepared by the department. The revised contract is, in our opinion, an improvement over the 1967 version presently in use. The new contract provides flexibility in meeting the particular problems of any given situation through the use of discretionary sections while still safeguarding the state's interests through mandatory clauses.

Several areas need to be clarified and strengthened in the proposed Model Contract in order that the state will be protected in the event the contractor fails to perform.

Problem areas needing attention include the following:

- The title of Rider "A" contains the term "components" which is not defined. A solution would be to substitute the term "equipment" which is defined and which includes unattached EDP hardware, whereas the term component might not.
- The definition of "data processing system" in Rider "A" appears to exclude terminals connected to the system via common carrier lines or state leased lines.
- Sections 3b3 and 4b3 of Rider "A" fail to stipulate performance criteria for programming aid. Delivery of the programming aid, regardless of its state of readiness, appears to satisfy all requirements.
- Rider "A", section 4 states that liquidated damages "may be deducted by the state from any money payable to the contractor pursuant to this contract". No provision is made as to how the state would collect in the event the contractor failed completely to perform and the order was subsequently cancelled.
- The word charge in Rider "C" is apparently misspelled "change".
- Rider "E", section 3b appears to be inconsistent with 3a3 in stipulating that corrections to programming aids with category I support "will not be installed by the contractor unless the state pays for it at analyst rates". This would seem to mean that the state would have to pay the vendor for

corrections to his own proprietary software. Corrections to programming aids with category I or II support should be installed free of charge.

Section 4 of the Budget Act of 1972-73 requires that contracts awarded for lease or purchase of electronic data processing equipment, activities, services or supplies be in the form of the Model Contract. In as much as the proposed revision of the Model Contract covers only the leasing (with a purchase option, as opposed to any outright purchase) of equipment and does not cover the procurement of unrelated EDP services or supplies, it appears that additional work is yet to be done.

It should also be remembered that section 4 of the Budget Bill of 1973-74 deletes the requirement for the use of the Model Contract.



Walter J. Quinn
Acting Deputy Auditor General

April 18, 1973

Staff:

Jerry L. Bassett
Gary S. Ross